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E-filing

6 Attorneys for defendants
7 American Express Corporation
and Nationwide Credit, Inc.

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11
12 MICHAEL VIRATA an individual,

13 Plaintiff,

14
15 vs.

16 AMERICAN EXPRESS
17 CORPORATION; NATIONWIDE
18 CREDIT, INC.; DOES 1 THROUGH
10

19 Defendant.
20
21
22
23
24
25
26
27
28

CASE NO.:

07 3277

NOTICE OF REMOVAL

JCS

BY FAX

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

2 PLEASE TAKE NOTICE that defendants Nationwide Credit, Inc. ("NCI")
3 and American Express Corporation ("Amex") hereby remove to this Court the state
4 court action described below.

5 1. On May 15, 2007, a complaint was filed against NCI and Amex by
6 plaintiff Michael Virata ("Plaintiff") in an action pending in the Superior Court of
7 the State of California in and for the County of San Francisco, entitled *Michael*
8 *Virata v. American Express Corporation and Nationwide Credit, Inc.*, Case No.
9 CGC-07-463417. A copy of the state court complaint ("Complaint") is attached
10 hereto as **Exhibit A**.

11 2. This removal petition is timely under 28 U.S.C. § 1446(b) because
12 NCI and Amex first received a copy of the Complaint, via United States Mail on
13 May 22, 2007.

14 **JURISDICTION**

15 3. This action is a civil action of which this Court has original
16 jurisdiction under 28 U.S.C. § 1331 and that may be removed to this Court by NCI
17 and Amex pursuant to the provisions of 28 U.S.C. § 1441(b) in that the Complaint
18 asserts federal claims against NCI and Amex allegedly arising under 15 U.S.C. §
19 1692, *et seq.* (the Fair Debt Collection Practices Act).

20 **VENUE**

21 4. The Complaint was filed in the Superior Court of the State of
22 California, County of San Francisco. Therefore, venue in the San Francisco
23 Division or the Oakland Division of this District is proper. *See* Local Rule 3-2(e)
24 (stating "all civil actions which arise in the counties of San Francisco, . . . shall be
25 assigned to the San Francisco Division or the Oakland Division"); 28 U.S.C. §
26 1441(a) (providing for removal "to the district court of the United States for the
27 district and division embracing the place" where the state court action is pending).

28 //

1 5. Defendants NCI and Amex are represented by the undersigned.

2
3 DATED: June 21, 2007

SIMMONDS & NARITA, LLP
TOMIO B. NARITA
JEFFREY A. TOPOR

4
5
6 By: 

Jeffrey A. Topor
Attorneys for defendants
American Express Corporation
and Nationwide Credit, Inc.

Exhibit A

**ENDORSED
FILED**
San Francisco County Superior Court

MAY 15 2007

GORDON PARK-LI, Clerk
BY: DEBORAH STEPPE
Deputy Clerk

SUMMONS ISSUED

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(415) 891-8208 (Fax)
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(415) 217-0000
7 (415) 738-2302 (Fax)
berglaw@gmail.com (e-mail)

8 ATTORNEYS FOR PLAINTIFF

CASE MANAGEMENT CONFERENCE SET

SEP 14 2007 - 10³⁰ AM

DEPARTMENT 212

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN FRANCISCO

13 LIMITED CIVIL **CGC-07-463417**

14 MICHAEL VIRATA, an individual,

Case No.:

15 Plaintiff,

16 v.

17 AMERICAN EXPRESS CORPORATION;
NATIONWIDE CREDIT, INC.; DOES 1
THROUGH 10,

**COMPLAINT SEEKING REDRESS FOR
DEFENDANTS' VIOLATION OF
FEDERAL AND STATE LAW
REGULATING CONSUMER DEBT
COLLECTION PRACTICES**

DEMAND FOR JURY TRIAL

18 Defendants. /

19
20 **I. INTRODUCTION**

21 1. Plaintiff MICHAEL VIRATA is a resident of San Francisco County. He brings
22 this lawsuit to seek redress for Defendants' violation of the California and Federal laws
23 regulating consumer debt collection practices.

24 2. The Defendants, AMERICAN EXPRESS CORPORATION and NATIONWIDE
25 CREDIT, INC., are debt collectors as defined at Cal. Civ. Code § 1788.2(c), which provides:

26 **(c) The term "debt collector" means any person who, in the**
27 **ordinary course of business, regularly, on behalf of himself or**
herself or others, engages in debt collection.

28 COMPLAINT FOR VIOLATION OF
THE CALIFORNIA AND FEDERAL
FAIR DEBT COLLECTION PRACTICES ACT

VIRATA V. AMERICAN EXPRESS CORP.,
et al.

3. The California law, known as the Rosenthal Fair Debt Collection Practices Act, is at Cal. Civ. Code § 1788, *et seq.* The California law incorporates provisions of the federal Fair Debt Collection Practices Act ("FDCPA"), pursuant to Cal. Civ. Code § 1788.17, which states:

....every debt collector collecting or attempting to collect a consumer debt shall comply with the provisions of Sections 1692b to 1692j.... of Title 15 of the United States Code [i.e., the FDCPA].

4. Plaintiff, by this action, seeks statutory damages, attorney's fees and costs.

II. JURISDICTION AND VENUE

5. Jurisdiction in this court is conferred by 15 U.S.C. § 1692k(d).

6. Venue is proper in this county because Defendants do business in this county, and the collection communications were received in this county.

III. PARTIES

4. Plaintiff, MICHAEL VIRATA ("Mr. Virata") is an individual who resides in San Francisco County.

5. Defendant AMERICAN EXPRESS CORPORATION ("AEX") has its principal office at 200 Vesey World Financial Lane, New York. AEX is a debt collector as defined at Cal. Civ. Code § 1788.2. AEX is amenable to service of process on an officer at its principal office.

6. Defendant NATIONWIDE CREDIT, INC. ("Nationwide") has its principal office in the Western United States at 3600 E. University Drive, Suite 1350, Phoenix, Arizona 85034-7245. Nationwide is a debt collector as defined by 15 U.S.C. § 1692a(6), and as defined by Cal. Civ. Code § 1788.2. Defendant Nationwide is served with legal process on an officer at its principal office.

7. Plaintiff is ignorant of the true names or capacities of the defendants sued herein under the fictitious names of DOE ONE through TEN inclusive.

8. Each of the fictitiously named Doe Defendants is responsible in some manner for the wrongdoing alleged herein, and is liable for the damages recoverable by Plaintiff. Each of the Defendants was acting as agent or employee for the others.

IV. FACTUAL ALLEGATIONS

9. Defendant AEX extended a credit card accommodation to Mr. Virata under its "Starwood Preferred Guest Program." The last four digits of the account were designated as 1007.

10. The account was used for purchase of consumer goods for Plaintiff's personal and household needs.

11. Plaintiff was unable to make payment on the account because of financial setbacks.

12. Interest on the account was escalating at an annual percentage rate of 30.22%, a nominal annual percentage rate of 30.24%, a monthly late payment fee of \$35.00, and an overlimit fee of \$35.00.

13. Plaintiff sought legal representation to help him through this bleak financial period, and to deal with the unrelenting and stressful demands of his creditors and their collection agents. He hired attorney Irving L. Berg for legal representation.

14. Plaintiff was advised by his attorney that, once his creditors and their collection agents were advised of attorney representation, the law required that the creditors and their collection agents must leave Plaintiff alone and deal with the attorney.

15. On January 6, 2007, Plaintiff's attorney sent Defendant AEX a letter advising of his representation of Plaintiff. Exhibit A is a copy of the letter. The letter states, among other things:

This office represents the captioned consumer. CEASE and DESIST further communication with the consumer.

All communications concerning my client's financial affairs, including the captioned debt, and any other debts alleged to be owed by my client ("debts") shall hereafter be made to this office in writing.

16. Some date thereafter, Defendant AEX appointed Defendant Nationwide as its agent. AEX transferred and turned over to Defendant Nationwide Plaintiff's account, including the letter of attorney representation (Exhibit A), and notes of Defendant AEX's collection action

1 taken against Plaintiff to collect the claim against Plaintiff's accounts.

2 17. On January 30, 2007, Defendant Nationwide, notwithstanding the notice of
3 attorney representation (Exhibit A), wrote Plaintiff directly, demanding payment of the account.
4 Exhibit B is a copy of the Nationwide letter.

5 18. On February 6, 2007 or thereabouts, Defendant AEX, notwithstanding the notice
6 of attorney representation, communicated directly with Plaintiff by sending Plaintiff Exhibit C,
7 which Defendant AEX described as "for information purposes only," and "not a bill." Exhibit C
8 instructed Plaintiff: "Please contact your collection agency for account information. Disregard
9 the minimum due amount," and "Your account is in default and the balance is due in full."
10 Exhibit C shows: "New Balance. . . \$2,750.80," followed by "Minimum Amount Due \$660.46."

11 19. Though AEX, by its notice, Exhibit C, tells Mr. Virata that the minimum amount
12 due is \$660.46, it demands payment in full. Such contradictory representations are deceptive and
13 misleading. Likewise, Defendant AEX's direction to contact the collection agency for account
14 information is deceptive and misleading.

15 20. Defendant AEX violates California and Federal law as set forth hereafter, in
16 sending Exhibit C to Plaintiff after receiving notice of attorney representation..

17 21. Defendant AEX and its agent, Defendant Nationwide, are liable for sending a
18 collection letter, Exhibit B, to Plaintiff after advisement of attorney representation. Defendants'
19 conduct violates Cal. Civ. Code § 1788.14(c), which prohibits:

20 **(c) Initiating communications other than statements of**
21 **account, with the debtor with regard to the consumer debt,**
22 **when the debt collector has been previously notified in writing**
23 **by the debtor's attorney that the debtor is represented by such**
24 **attorney with respect to the consumer debt and such notice**
25 **includes the attorney's name and address and a request by**
26 **such attorney that all communications regarding the consumer**
27 **debt be addressed to such attorney, unless the attorney fails to**
28 **answer correspondence, return telephone calls, or discuss the**
obligation in questions.

22. Said conduct further violates 15 U.S.C. § 1692c(a)(2), which states a debt
collector may not communicate with a consumer without the consumer's permission:

(2) if the debt collector knows the consumer is represented by an

attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer....

CLAIM FOR RELIEF

23. Plaintiff incorporates by reference all of the foregoing paragraphs.

24. Defendants violate Cal. Civ. Code § 1788.14(c) and 15 U.S.C. § 1692c(a)(2) by communicating with Plaintiff after receiving notice of attorney representation.

25. Defendant AEX violates 15 U.S.C. § 1692e and e(10) by the deceptive and misleading representation as to the amount owed and the amount necessary to pay.

26. Defendant AEX violates 15 U.S.C. § 1692e(2)(A) as to the characterization of the amount of the debt.

27. Defendant AEX violates 15 U.S.C. §§ 1692e, 1692e(2)(A), and 1692e(10) by its representation that Plaintiff must contact the collection agency for account information, though by its Exhibit C makes representations as to the amount owed.

V. PRAYER

WHEREFORE, according to the remedies allowable under the California law and Federal law, as provided by Cal. Civ. Code § 1788.32:

The remedies provided herein are intended to be cumulative and are in addition to any other procedures, rights, or remedies under any other provision of law,

Plaintiff prays for damages as follows:

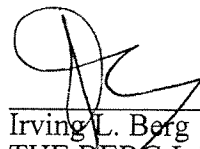
A. Statutory damages of \$2,000 as to Defendant American Express, pursuant to Cal. Civ. Code §§ 1788.30(b) and 15 U.S.C. § 1692k;

B. Statutory damages of \$2,000 as to Defendant Nationwide Credit, Inc., pursuant to Cal. Civ. Code § 1788.30(b) and 15 U.S.C. § 1692k;

C. Statutory damages of \$6,000 as to each of the Doe Defendants, each to pay their proportionate share of statutory liability, pursuant to 15 Cal. Civ. Code § 1788.30(b) and U.S.C. § 1692k;

1 D. Reasonable attorney's fees and costs, pursuant to Cal. Civ. Code § 1788.30 and 15
2 U.S.C. § 1692k(a)(3).

3 Dated: 5-12-07



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ATTORNEYS FOR PLAINTIFF

EXHIBIT A

THE BERG LAW GROUP
ATTORNEYS AND COUNSELORS AT LAW
145 Town Center, PMB 493
Corte Madera, California 94925
Phone: (415) 924-0742 Fax: (415) 891-8208
e-mail irvberg@comcast.net

IRVING L. BERG, ESQ.

January 6, 2007

American Express
Box 0003
Los Angeles, CA 90096-0003

Re: *Michael D. Virata*
Account No.: xxxx71000

Dear Sir or Madam:

This office represents the captioned consumer. CEASE and DESIST further communication with the consumer.

All communications concerning my client's financial affairs, including the captioned debt, and any other debts alleged to be owed by my client ("debts") shall hereafter be made to this office in writing.

Any action you intend to take with respect to collection of the debts shall hereafter be made to this office in writing. The debts are disputed.

Do not contact my client or my client's employer concerning the debts. Do not contact my client's family or friends regarding the alleged debts. All contact shall only be with this office in writing.

Please be advised that recording of telephone calls is prohibited by California law.

Further, please note that, should my client bring a legal action in connection with your collection practices that legal action could result in a judgment that would include actual costs of filing the complaint, actual costs of service of process, and reasonable attorney's fees.

Sincerely,

Irving L. Berg
ILB/rl

EXHIBIT B



3600 E UNIVERSITY DR, STE B1350, PHOENIX AZ 85034-7296
1-800-850-8719

01/30/2007

RE: AMERICAN EXP TRAVEL RELATED SERV CO INC, 371700110271000
BAL: \$708.44

This is to advise you that your past due debt with the above creditor has been placed with us for collection.

All future payments must be made directly to our office.

Your account is now past due and due in full. To settle the matter, you should send your payment for the above amount by check or money order. To be sure of proper credit, make your payment payable to AMERICAN EXP TRAVEL RELATED SERV CO INC.

The total account balance as of the date of this letter is shown above. Your account balance may increase because of interest or other charges, if so provided in your agreement with your creditor.

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of the debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice, that the debt, or any portion thereof is disputed, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

PERSONAL AND CONFIDENTIAL

PO BOX 740640
ATLANTA GA 30374-0640



FOR PROPER CREDIT TO YOUR ACCOUNT **RETURN THIS STUB** IN THE ENCLOSED ENVELOPE WITH YOUR CHECK OR MONEY ORDER. BE SURE THAT OUR NAME AND ADDRESS APPEARS IN THE WINDOW.

009/A01/7XL/01/30/2007

45



07030101856
MICHAEL VIRATA
570 FRANCISCO ST UNIT 603
SAN FRANCISCO CA 94133-1835

A01

**PLEASE SEE REVERSE SIDE FOR
IMPORTANT INFORMATION**

RE:	AMERICAN EXP TRAVEL RELATED SERV CO INC 02063601D	
ID NUMBER:	07030101856	
ACCOUNT NO:	371700110271000	
BALANCE DUE:	\$708.44	
AMOUNT ENCLOSED:	\$	

☐ Change of address: Print New Address on Back

NATIONWIDE CREDIT, INC.
PO BOX 740640
ATLANTA GA 30374-0640



01 07030101856 2

EXHIBIT C

**Starwood Preferred Guest®
Credit Card****To view your Starwood
Preferred Guest® account
balance visit spg.com**Prepared For
MICHAEL D VIRATAAccount Number
3713-356221-81007Closing Date
02/06/07

Page 1 of 3

Previous Balance \$	Payment Activity \$	New Activity \$ inc. Adjustments and Finance Charges if any	New Balance \$	Minimum Amount Due \$
2,610.48	0.00	+140.32	=2,750.80	660.46

**Payment Due Date
02/26/07**

Minimum Amount Due includes:
 Past due amount \$540.14
 This month's amount due \$120.32
 Please refer to page 2 for important information regarding your account

Credit Line Summary on 02/06/07	Total Credit Line \$ 2,000.00	Available Credit Line \$ 0.00	Cash Advance Limit \$ 0.00	Available Cash Limit \$ 0.00
---------------------------------------	-------------------------------------	-------------------------------------	----------------------------------	------------------------------------

This statement is for information purposes only. This is not a bill. Please contact your collections agency for account information. Disregard the minimum due amount, your account is in default and the balance is due in full.

For assistance or questions about your account, contact us at www.americanexpress.com or call Customer Service at 1-800-297-1000.

Activity

* Indicates posting date

Amount \$

Total of Payment Activity

0.00

New Activity for MICHAEL D VIRATA

Card XXXX-XXXXX1-81007

Amount \$

01/30/07	Late Payment Fee	35.00
02/06/07	Periodic FINANCE CHARGE	70.32
02/06/07	Overlimit Fee	35.00

Total of New Activity

140.32

↓ Please fold on the perforation below, detach and return with your payment ↓

Payment CouponAccount Number
3713-356221-81007

MICHAEL D VIRATA
 UNIT 603
 570 FRANCISCO ST
 SAN FRANCISCO CA 94133-1835



Mail Payment to:

AMERICAN EXPRESS
 BOX 0001
 LOS ANGELES CA 90096-0001

\$
 Amount enclosed

Payment Due Date:
02/26/07

Continued on Page 3

Please enter your account number on all checks and correspondence.

Total New Balance
\$ 2,750.80

Make check payable to American Express.

Minimum Amount Due
\$660.46

See Finance Charge section on reverse side for a description of when additional Finance Charges are not assessed on Purchases.

Check here if your address or phone number has changed. Please note changes on reverse side.



00125 R07SFABA 00063 00102. (2